

By Clause 5 of the Government Contract any subletting or assignment of the Contract is prohibited without the previous consent in writing of the Government.

S. B. Tan, for the plaintiffs on the Issue.

R. Page, for the judgment creditor, the Defendant on the Issue.

For the plaintiffs on the Issue it was contended that the letter of the 15th April 1931 the Power of Attorney dated the 2nd June 1931 and the Agreement dated the 10th June 1931 constituted an assignment of the moneys payable under the Government Contract and (a) that a Judgment creditor is not entitled to attach debts of which there has been a bona fide assignment by the Judgment Debtor, or the interest therein of the Judgment Debtor has been parted with, (b). that the Judgment Creditor stands exactly in the shoes of the Judgment Debtor and he therefore can only attach such property of his debtor as the debtor could deal properly and without violation of the rights of other parties.

The cases quoted are:—

Ngo Boo Bee vs. Khaw Joo Choe, (1921) 14. S. S. L. R. 90., *N. P. Glegg vs. Bromley*, (1912) 3 K. B. D. 474.

Pickering vs. Ilfracomb Rail Co., (1868) 3 C. P. C. 235.

Vyse vs. Brown, (1884) 13 Q. B. D. 199.

Badeley vs. Consolidated Bank, (1888) 38 Ch. D. 238.

Civil Procedure Code. Sections 617, 621 and 640.

For the Defendant on the Issue it was contended that the assignment, in view of the clause prohibiting assignments in the Government Contract, was a nullity and that it was in fact a fraud on creditors. Counsel referred to Hudson on Building Contracts (5th edition) on the "Right of builder to sub-let", and at page 496 on the "Test of assignability". Halsbury Vol: 3 page 313 para. 518. *Pritchett and Gold and Electrical Power Storage Co., Ltd. vs. Currie*, (1916) 2 Ch. D. 515.

Terrell, J., delivering an oral judgment on the 30th November, 1932 held that the plaintiffs on the issue are entitled to payment of the said sum of \$3,500/ as against the Judgment Creditor, the Judgment Debtors having parted with their interest therein prior to the date of the Notice of Garnishment.

Order accordingly

Solicitors for the Plaintiffs on the Issue—

Donaldson & Burkinshaw.

Solicitors for the Defendant on the Issue—

Allen & Gledhill.

(Original Civil Jurisdiction)

Prichard, J.

March 3, 1933.

KHAW JOO CHIE.....Plaintiff

vs.

KHAW JOO TOK & ors.....Defendants

(Penang Suit No: 499 of 1931)

Arbitration—award—points of law—umpire's refusal to state a special case—Ordinance No. 51 (Arbitration) S. 12.

The conduct of an arbitrator in refusing to state in the form of a special case for the decision of the Court the points of law which have arisen in the arbitration is irregular and the award must be set aside.

Re Fischel and Mann, (1919) 2 K.B. 431, *In re Palmer and Hosken*, (1896) 1 Q.B. 131 followed.

MOTION heard before **Prichard J.** in the above suit on 13th day of February 1933.

The facts and arguments appear from the Judgment below.

Saunders, (Register with him), for the Plaintiff.

Pooley for the First defendant.

The second and third defendants did not enter appearance.

Cur. ad. Vult.

Prichard, J.—This was a motion to set aside the award of an umpire.

The Plaintiff and the Defendants, by an agreement in writing dated the 29th day of December, 1916, agreed to become partners in a firm. The agreement provided—clause 18—that all disputes between the partners should be referred to arbitration subject to the provisions of the Arbitration Ordinance, 1890.

The Plaintiff started an action, and on the 11th day of January, 1932, an order was made, upon the application of the first Defendant, by summons of the 19th October 1931, based upon clause 18 of the agreement, that the matters in difference should be referred to two arbitrators and, in the case of their not agreeing, to an umpire.

The arbitration was proceeded with and, later, was referred to an umpire. By a letter of the 13th January, 1933, Messrs. Hogan & Ivens, as Solicitors for the Plaintiff and for the third Defendant, requested that the points of law which had arisen in the arbitration should be referred for a decision of the Court in the form of a special case.

On the 14th of January the umpire's Solicitors replied that the umpire had already come to his decision and had instructed them to draw the award, and that they did not think it necessary to put the award in the form of a special case. The award was published on the 17th of January, 1933.

Applicant contends (*inter alia*) that the umpire was guilty of misconduct in refusing to state a special case, and that the award should be set aside.

I agree with this contention on the authority of *Re Fischel & Mann*, (1919) 2 K.B. 431, at pp. 440 and 441, and *in re Palmer & Hosken*, (1896) 1 Q.B. 131—see pp. 136, 137; see also Russell on Arbitration, 11th edition p. 206.

I accordingly order that the award be set aside under section 12(2) of the Arbitration Ordinance and that the matter proceed to trial as an ordinary action.

Costs of this motion to abide the result of the action.

Order accordingly.

Solicitors for the plaintiff—*Hogan & Ivens*.

Solicitors for the First Defendant—

Presgrave & Matthews.

(Original Civil Jurisdiction)

Terrell, J.

February 10, 1933.

RE CHUA CHENG SUAN

(Singapore Bankruptcy No. 54 of 1925)

Ordinance No. 44 Section 113 (2)—Prosecution of offending Bankrupt.

A prosecution for offences against the Bankruptcy Ordinance will not be ordered under Section 113 (2) by a Judge if he is satisfied that the Official Assignee has properly exercised his judicial discretion in refusing the written consent required by Section 113 subsection (2).

An application was made by Motion by a creditor of the Bankrupt Chua Cheng Suan for an Order that the Bankrupt be prosecuted for an offence committed under Section 107(m) of Ordinance No. 44 (Bankruptcy). The Applicant alleged that the Bankrupt was adjudicated on the 6th March 1925 and that on the 9th July and 17th September 1929 the Bankrupt borrowed from the Applicant \$660 on two promissory notes and had repaid him \$52 to account of these two notes and that at the time the Bankrupt contracted these debts he did not disclose to the Applicant that he was an undischarged bankrupt.

The Applicant also produced evidence that he had applied to the Official Assignee for sanction to prosecute the Bankrupt for the offence punishable under Section 107(m) of Ordinance No. 44 (Bankruptcy) and that the Official Assignee had refused to give the written consent to sanction the prosecution required by S. 113 (2) of the Ordinance. Accordingly he applied to the Judge for an Order under Section 113 (2) above.

S. Fung for the Applicant submitted that he had produced prima facie evidence to show that an offence had been committed and that it was the duty of the Official Assignee to sanction the proceedings and that if he would not do so the Judge should make an Order directing prosecution.

Tudor (Assistant Official Assignee) did not oppose the application but drew the attention of the Court to the Official Assignee's reasons for not giving his written

consent as required by that action. He stated that the Official Assignee had investigated the matter and as a result of such investigation had satisfied himself that there was no likelihood that the Bankrupt would be convicted of the alleged offence.

Terrell J. gave an oral judgment to the following effect:—

"It appears to me that all I am concerned to see is whether in refusing his written consent the Official Assignee is properly exercising the judicial discretion vested in him. If he has properly exercised such discretion I should decline to interfere with it. In this case upon hearing the statements made by the Assistant Official Assignee I am of opinion that the Official Assignee has properly exercised his judicial discretion and therefore I refuse the motion".

Motion Dismissed.

Solicitor for the Applicant—*S. Fung*.

(Appellate Criminal Jurisdiction)

Deane, J.

August 22, 1927.

CHOP SUM THYE.....Appellants

vs.

REX.....Respondent

(Singapore Criminal Appeal No. 19 of 1927)

Pawnbroker—pawning of stolen property—conviction of thief and receiver—Magistrate's order—unconditional restitution—appeal—jurisdiction—"Criminal cause or matter"—Ordinance No. 61 (Pawnbrokers) S. 28 (1); Criminal Procedure Code, S. 295.

The Appellants, pawnbrokers, received in pawn certain diamonds which proved to be the very diamonds stated in a Police Circular to have been missing from a jeweller. The thief and receiver of the diamonds were arrested, tried and convicted of theft and dishonestly receiving stolen property respectively. After the conviction was recorded the prosecutor applied for the return of the diamonds. Counsel who watched those proceedings on behalf of appellants opposed the application. The Magistrate made an order for unconditional restitution. In an appeal against the order a preliminary objection was taken that there was no right of appeal from the order:—

Held, that there was a right of appeal under S. 295 of the Criminal Procedure Code.

The Queen vs. The Justices of the Central Criminal Court, 18 Q.B.D. 314 and *Leicester v. Cherryman*, (1907) 2 K.B. 101 considered.

Held, that the order of the Magistrate was within the jurisdiction of the Police Court and that the conviction was perfectly legal.

Held also, that the question of ownership of the diamonds could not be re-opened, the order being consequential upon the result of the trial of the thief and made upon the facts disclosed in the trial to which the appellants could not be a party.

Reg. v. Goldsmith, 12 Cox. C.C. 595 and *Rex. v. Macklin* 5 Cox. C.C. 216 applied.

APPEAL from an order made by *Mudie, D. J.* for the unconditional restitution to the owner of the diamonds stolen from him.